

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the matter of	)	
	)	File No. EB-01-IH-0099
Entercom New Orleans License, LLC	)	
	)	NAL/Acct. No. 2002 3208 0006
Licensee of Station WEZB-FM,	)	Facility # 20346
New Orleans, Louisiana	)	FRN # 0004-9793-81
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: November 6, 2002**

**Released: November 7, 2002**

**By the Chief, Enforcement Bureau:**

**I. INTRODUCTION**

1. In this Order, we cancel a monetary forfeiture in the amount of \$4,000 proposed against Entercom New Orleans License, LLC (“Entercom”), licensee of Station WEZB-FM, New Orleans, Louisiana, for apparent willful violation of Section 73.1206 of the Commission’s rules, 47 C.F.R. § 73.1206, which requires that a licensee inform a caller of its intention to broadcast the caller’s conversation except when the caller is aware, or may be presumed to be aware, that the call is likely to be broadcast.<sup>1</sup>

2. On February 6, 2002, the Chief, Enforcement Bureau, acting pursuant to delegated authority, issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Entercom, proposing a \$4,000 forfeiture.<sup>2</sup> We issued the NAL because it appeared that Entercom had recorded and subsequently broadcast a telephone conversation without informing the other party of its intention to do so, even though it appeared that the circumstances required it. We therefore determined that Entercom had apparently violated Section 73.1206 of the Commission’s rules.

**II. DISCUSSION**

3. Entercom responded to the NAL, and requested cancellation of the proposed forfeiture. Entercom argued that complainant’s telephone call falls within the “call-in” presumption of Section

<sup>1</sup> Section 73.1206 of the rules provides, in pertinent part, that: Before recording a telephone conversation for broadcast . . . a licensee shall inform any party to the call of the licensee’s intention to broadcast the conversation, except where such party is aware or may be presumed to be aware from the circumstances of the conversation that it is being or likely will be broadcast. Such awareness is presumed to exist . . . [where the non-licensee party] originates the call and it is obvious that it is in connection with a program in which the station customarily broadcasts telephone conversations.

<sup>2</sup> See *Entercom New Orleans License, LLC*, 17 FCC Rcd. 2160 (EB 2002).

73.1206 and that the licensee was not required to inform the complainant that her call was being recorded and would likely be broadcast. In this case the complainant originated a telephone call to Entercom's well-publicized "call-in" telephone line during a program that regularly broadcast telephone calls from listeners. The program host identified the station when he answered the call. Because the complainant originated the call, Entercom argues that the notice requirement of Section 73.1206 of the Commission's rules was inapplicable to the call. We have considered Entercom's response in light of the unique facts of this case and the applicable provisions of the Commission's rules. Under these circumstances, we find that complainant's telephone call falls within the "call-in" presumption of Section 73.1206, such that notice is not required in this case.<sup>3</sup> We, therefore, conclude that cancellation of the proposed forfeiture is appropriate.

### III. ORDERING CLAUSES

4. Accordingly, IT IS ORDERED THAT, pursuant to 47 U.S.C. § 504(b) and 47 C.F.R. § 1.80(f)(4), the monetary forfeiture issued against Entercom New Orleans License, LLC IS HEREBY CANCELLED.

5. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order shall be sent by Certified Mail/Return Receipt Requested, to Entercom New Orleans License, LLC, c/o John C. Donlevie, Executive Vice President, Entercom New Orleans License, LLC, 401 City Avenue, Suite 409, Bala Cynwyd, Pennsylvania 19004; with a copy to Brian M. Madden, Leventhal, Senter & Lerman, P.L.L.C., 2000 K Street, N.W., Suite 600, Washington, D.C. 20006-1809.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>3</sup> See *In the Matter of Amendment of Part 73 of the Commission's Rules and Regulations With Respect To the Broadcast of Telephone Conversations, Report and Order*, 23 FCC 2d 1,2 (1970).